IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2597 OF 1996

Kalyan Municipal Corporation & ors ..Petitioners

V/s.

Serojadevi Shashibhushan Grayan & ors ..Respondents

Mr.A.S.Rao for the petitioners
Mr.D.K.Ghaisas for the respondent Nos.1 & 2

CORAM : R.V.MORE, J.

DATE : 25TH JUNE, 2007

P.C.

1. This Writ Petition under Article 227 of the Constitution of India takes exception to the order passed by the Joint Civil Judge, Junior Division, Kalyan on 29th March, 2006 below notice at Exh.36 in Regular Civil Suit No.108 of 1995 whereby the learned Judge held the petitioner Nos.2 to 4 responsible for non-compliance of the order dated 2nd January, 1996 passed below Exh.5 in Regular Civil Suit No.108 of 1995 and thereafter, imposed a fine of Rs.2000/- on the petitioner No.2 and a fine of Rs.1000/- each on the petitioner Nos.3 & 4. The petitioner No.3, in addition to above fine, was

sentenced for three days. The facts leading to the present petition are as under :-

The respondents filed Regular Civil Suit No.108 of 1995 in the Court of Joint Civil Judge, Junior Division, Kalyan against the petitioner No.1 for injunction simplicitor in respect of the construction admeasuring 150 Sq.yards, situate on plot No.18, survey No.67. The respondents sought injunction against the petitioner No.1 only that they should be restrained from demolishing any construction of the above said plot.

2. The trial Court by it's order dated 22nd February, 1995 issued a Show Cause Notice to the defendant i.e. petitioner No.1 and directed parties to maintain status-quo regarding the suit property. This order of status-quo was passed in an application at Exh.5 taken out for temporary injunction by the respondents.

3. The application at Exh.5 was thereafter, placed for orders before the trial Court. The

trial Court, after hearing both sides and perusal of the Commissioner's Report, found that the respondents/plaintiffs have made construction of second and third floor of the suit premises, taking disadvantage of the order granting status-quo. The trial Court being satisfied that the construction on the second and third floor was carried by the respondents after order of status-quo, was illegal, directed petitioner No.1 to demolish the same. The trial Court by order of 2nd January, 1996 rejected the application at Exh.5 for interim injunction and petitioner No.1 was directed to demolish illegal construction which was carried, by respondents by disobeying the order of status quo, within a period of 15 days.

4. The learned trial Judge by his order dated 29th March, 1996 below Exh.36 held the petitioner Nos.2 to 4 guilty under the Contempt of Courts Act, for failure to comply with the order dated 2nd January, 1996, and punished them as stated above. This order is challenged by filing this Writ Petition.

5. Mr.A.S.Rao, the learned counsel appearing for the petitioners pointed out to me that the construction which was carried out by respondents on the second and third floor is demolished by the petitioner No.1 in pursuance of the order dated 2nd January, 1996 except only one block on the second floor and same could not be demolished as it was occupied by the respondent No.1. The petitioner No.3 therefore, gave a notice dated 11th January, 1996 to the respondent No.1 requiring her to vacate the said block. The respondent No.1 did not comply with this notice. The petitioner No.3 thereafter, wrote a letter on 16th February, 1996 to Kalyan police under the provisions of Section 260 of the B.P.M.C.Act requesting eviction of the respondent No.1 from the block on the second floor. The Kalyan police, by writing a letter dated 20th February, 1996 to the petitioner No.3, showed their inability and pointed out that eviction proceedings are required to be undertaken by the Municipal Corporation and only police bandobast will be provided.

6. Mr.A.S.Rao, the learned counsel appearing for the petitioners further submitted that after the impugned order was passed the abovementioned remaining unauthorized construction on the second floor is demolished by the Municipal Corporation and thus, complied with the order dated 2nd January, 1996, passed below Exh.5. This was pointed out to the learned trial Judge by filing Revision Application. However, same was also dismissed by the trial Court.

7. Mr.A.S.Rao, learned counsel also submitted that no individual notices were issued to the petitioner Nos.2 to 4 by the learned Judge before taking any action under the Contempt of Courts Act. He further submitted that in any case there was justification for the petitioners in not carrying out demolition and there is no question of wilful disobedience. He also pointed out that the entire illegal construction is demolished after the impugned order is passed. The learned trial Judge ought to have reviewed earlier order.

8. I have gone through the documents on record and I have also given my anxious thoughts to the submissions made by the petitioners. After hearing both sides, I am of the considered opinion that the order impugned in this Writ Petition deserves to be quashed and set aside on the ground mentioned here in after.

9. Show Cause Notice at Exh.36 issued by the learned Joint Civil Judge, Junior Division, Kalyan is annexed at Exh.8 on page 72 of the Writ Petition. This notice dated 4th March, 1996 is issued to the Commissioner of Municipal Corporation. It is not issued in the personal name of the respondent No.2, the then Commissioner, nor same was issued to the petitioner Nos.2 and 3. The Commissioner of Municipal Corporation filed reply to this notice which is at Exh.I on page No.74 of this Writ Petition and thereafter, the impugned order is passed. The reply filed by the respondent No.1 unequivocally goes to show that in pursuance of the order dated 2nd January, 1996, on 6th January,

1996 Junior Engineer of the Municipal Corporation has demolished construction of 16 RCC columns on the third floor and one block on the second floor and only one block on the second floor remained to be demolished as it was occupied by the respondent No.1. It was also pointed out that notice was issued to the respondent No.1 on 11th January, 1996 and since she has not vacated, D.O. Letter was issued on 16th February, 1996 to the Deputy Commissioner of Police requesting him to get the said premises vacated for the purpose of demolition. The Deputy Commissioner of Police in turn was of the opinion that the eviction proceedings was required to be undertaken by the Municipal Corporation and not by the police. The respondent No.3 thereafter, again requested the Deputy Commissioner of police by his letter dated 13th March, 1996 to get the premises on the second floor vacated which was occupied by the respondent No.1. In this letter a reference was made to the provisions U/s.268(5) of the B.P.M.C.Act. It appears that inspite of this letter of the Deputy Commissioner of police has not taken any action for

eviction of the respondent No.1 and therefore, one block on the second floor remained to be demolished.

10. After taking into consideration above facts, it is clear that the respondent No.1 tried their best to comply with the order of the trial Court dated 2nd January, 1996. In fact, most of the unauthorized construction on the second and third floor was already demolished. Only one block on the second floor remained to be demolished since same was occupied by the respondent No.1 and it could not have been demolished without same being got vacated through police. As stated above, the police have not given any co-operation and therefore, respondent No.1 could not be evicted and premises occupied by the respondent No.1 could not be demolished. If these facts are taken into consideration, it cannot be said that the petitioners have disobeyed order of the trial Court. The petitioners have done everything possible to comply with the order passed by the trial Court and therefore, in my opinion, the

finding of the trial Court that petitioners have disobeyed the order dated 2nd January, 1996 is contrary to the evidence on record and therefore, deserves to be quashed and set aside.

11. The impugned order also deserves to be quashed and set aside on the ground that Show Cause Notice at Exh.36 was issued to the Commissioner of Municipal Corporation which is at Exh.H on page No.72 asking as to why action under the Contempt of Courts Act should not be taken. The notice was not issued to the respondent Nos.3 & 4 at all and though, the respondent No.2 was Commissioner at the relevant time, Show Cause Notice was not issued in his personal name. It is true that in pursuance of the notice, reply came to be filed by the Commissioner. Still, in my opinion, in the absence of any notice to the respondent Nos.3 & 4 and personal notice to the respondent No.2, no action for alleged breach of order can be taken. The contempt is serious business. The concerned contemnor is required to be served personally. The learned trial Judge, without issuing the notice

personally to the respondent Nos.2, 3 & 4, has passed impugned order and taken action under the Contempt of Courts Act which, according to me, does not stand scrutiny of law and therefore, same requires to be quashed and set aside.

12. I also find substance in the contention of Mr.A.S.Rao about jurisdiction of the learned trial Judge to take action under the Contempt of Courts Act. Show Cause Notice dated 4th March, 1996, at Exh.36 makes it absolutely clear that the learned trial Judge proposed to initiate action under the Contempt of Courts Act. The impugned order is passed in pursuance of this notice and petitioner Nos.2, 3 & 4 have been punished as stated above. Section 10 of the Contempt of Courts Act, 1971 deals with the powers of the High Court to punish contempt of subordinate Courts. Section 10 of the Contempt of Courts Act reads as under:-

> "Power of High Court to punish contempts of subordinate courts. -- Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts subordinate to it as it has and exercises in respect of contempts of itself :

> Provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code (45 of 1860).”
>
> Perusal of the above section makes it abundantly clear that in respect of the Contempt of Court subordinate to High Court, only High Court can exercise jurisdictional powers under the Contempt of Court Act,1971.

13. Under Rule 5 the Sub-ordinate Court can make a reference to the High Court in respect of the Civil Contempt. This provision aso makes it abundantly clear that the subordinate Courts cannot deal or punish contemnor under the Contempt of Courts Act. In view of the above said provisions, I am of the opinion that the trial Court could not have exercised the powers under the Contempt of Courts Act whereby petitioner Nos.2 & 3 are punished. On this ground also, the impugned order deserves to be quashed and set aside.

14. Be that as it may, as stated above, before passing of the impugned order only one block on the second floor had remained to be demolished and this block was demolished by the Municipal

Corporation/petitioner No.1 after impugned order was passed. The petitioner No.1 thereafter, filed Review Application and pointed out these facts to the learned Judge, but this Review Application was dismissed on the ground that the application is not maintainable. The impugned order in my opinion requires to be quashed and set aside, on the ground that the petitioner No.1, ultimately complied the order dated 2nd January, 1996, though, same was done after impugned order was passed.

15. In the facts and circumstances of the case I pass the following order.

O R D E R

I. The impugned order dated 29th March, 1996 passed by the learned Joint Civil Judge, Junior Division, Kalyan below Exh.36 in Regular Civil Suit No.108 of 1995 is quashed and set aside.

II. Exh.36 i.e.Show Cause Notice dated 4th March, 1996 issued by the Joint Civil Judge, Junior Division, Kalyan which is at Exh.H on page No.72 is discharged.

III. No order as to costs.

(R.V.MORE, J.)